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Federal Communications Commission

FCC 97-72

DISP 17
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.606(b))	MM Docket No. 92-246
Table of Allotments,)	RM 8091
TV Broadcast Stations.)	
(Ridgecrest, California))	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: March 4, 1997

Released: March 14, 1997

By the Commission:

1. The Commission has before it an Application for Review filed by Valley Public Television, Inc. ("Valley") that appeals the dismissal of its rulemaking petition. Community Television of Southern California ("CTSC") filed an Opposition to Valley's Application for Review, and Valley filed a Reply to CTSC's Opposition. For the reasons stated below, we are denying Valley's Application for Review.

2. Background. Originally, Valley and CTSC were mutually exclusive applicants for a noncommercial educational television station on Channel *39 at Bakersfield, California. Because Valley's application was short-spaced to Channel *25 at Ridgecrest, California, Valley filed a rulemaking petition requesting the substitution of Channel *41 for vacant Channel *25 at Ridgecrest. Alternatively, Valley requested the placement of a site restriction on Channel *25 at Ridgecrest to accommodate Valley's application at Bakersfield. After the rulemaking proceeding had begun, Valley and CTSC filed a joint petition for approval of a settlement agreement regarding their applications for Channel *39 at Bakersfield. The Presiding Judge approved that agreement.¹ The settlement provides, in pertinent part, that each party's application will be dismissed and that neither party can file an application for a full service station to operate on Channel *39 at Bakersfield for five years, unless an independent third party files an application for such a facility first. In view of that settlement, the Allocations Branch, Policy and Rules Division, Mass Media Bureau, issued a Report and Order² dismissing as moot the petition for rulemaking in the instant docket. Valley filed a Petition for Reconsideration of that

¹ See In Re Applications of Community Television of Southern California and Valley Public Television, Inc., Memorandum Opinion and Order, MM Docket No. 93-93 (FCC 93M-480), released July 20, 1993.

² 8 FCC Red 7626 (Allocations Br. 1993).

Report and Order, arguing that the Report and Order erred in finding Valley's petition to be moot. The Chief, Policy and Rules Division, issued a Memorandum Opinion and Order ("Memorandum Opinion")³ denying Valley's Petition for Reconsideration and ruling that the Report and Order properly dismissed the Ridgecrest proposal as moot.

3. Application for Review. Valley claims that the Memorandum Opinion erred in affirming the Report and Order's conclusion that Valley's petition for rulemaking is moot. Valley reiterates the arguments it made in its Petition for Reconsideration, namely, that since the settlement agreement between it and CTSC is good for only five years, there is no finality with respect to the settlement and the question with respect to Ridgecrest continues to be alive. Valley also notes that its rulemaking petition is not moot because the settlement agreement contains a contingency allowing Valley to file an application before the end of the five-year period if an independent third party files an application for Channel *39. Valley states for the first time that it will resubmit its application for Channel *39 at Bakersfield no later than September 1, 1998.⁴ In its Opposition, CTSC argues that the staff's Memorandum Opinion and Order was correctly decided. CTSC also contends that there are too many uncertainties with respect to future circumstances and events relating to Valley's proposed Channel *39 application to justify the Commission's going forward with this proceeding or holding the proceeding in abeyance until Valley files a Bakersfield application.

4. Discussion. After having carefully reviewed the record in this case, we conclude that the Memorandum Opinion herein properly affirmed the dismissal of Valley's petition for rulemaking as moot. Since Valley withdrew its application for Channel *39 at Bakersfield, any potential short-spacing between its application and Channel *25 at Ridgecrest was obviated, thereby eliminating the need to substitute channels at Ridgecrest. Further, we agree that Valley's intention to refile its application for Channel *39 at Bakersfield at some future date is speculative and did not provide adequate justification to warrant Valley's proposed changes in the TV Table of Allotments concerning Ridgecrest. In any event, since the issuance of the Memorandum Opinion, changed circumstances have occurred that continue to render Valley's petition for rulemaking moot for different reasons. Specifically, on March 28, 1996, Kern Educational Telecommunications Consortium ("KECT") filed an application (File No. BPED-960328KH) for a new noncommercial educational television station on Channel *39 at Bakersfield, California. KECT's application is not short-spaced to Channel *25 at Ridgecrest. In addition, the "cut-off" period, *i.e.*, the period allowed for filing competing applications against KECT's application,

³ 10 FCC Rcd 6107 (Policy and Rules Div. 1995).

⁴ Valley also argues that terminating this proceeding and reinitiating it at some future point would be inefficient and inconsistent with the Commission's commitment to reinventing government because such a course of action would further delay action on rulemaking issues that would remain the same. Further, it suggests that if the Commission decides not to complete the instant rulemaking proceeding at this time, the proceeding could be held in abeyance until the "hold" period on Valley's refiling of the Channel *39 application has expired.

closed on August 16, 1996,⁵ and no competing applications have been filed.⁶ Thus, any potential applicant such as Valley is precluded from filing a mutually exclusive application for Channel *39 at Bakersfield, pursuant to Section 73.3572(d) of the Commission's Rules. Further, we note that Valley could not file an application for a new NTSC television station at this time because of our decision in the digital television proceeding to cease further acceptance of applications for such stations.⁷ Since Valley's petition for rulemaking is designed to accommodate an application that was dismissed and cannot be filed at this time, it is clear that Valley's petition is moot.⁸

5. Accordingly, IT IS ORDERED, that the Application for Review filed by Valley Public Television, Inc. IS DENIED and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

⁵ See Report No. A-195, Mimeo No. 64016, released July 16, 1996, as corrected by Erratum, Mimeo No. 64166, released July 25, 1996.

⁶ Pursuant to the settlement agreement between Valley and CTSC, Valley could have filed an application for Bakersfield during the "cut-off" period for KECT's application. There is no record of Valley filing such an application, and a comparison of KECT's Board of Directors listed in its application and Valley's Board of Directors listed in its most recent Ownership Report (FCC Form 323-E) filed July 29, 1993, does not reveal that any director is on both boards.

⁷ See Sixth Further Notice of Proposed Rule Making, MM Docket No. 87-268, 11 FCC Rcd 10968, 11013 (1996).

⁸ Valley's argument about the efficiency of dismissing its rulemaking petition and its suggestion to hold the petition in abeyance were without merit at the time they were made because Valley cites no Commission rule or policy requiring the retention of a moot petition for rulemaking. In any event, these arguments are no longer relevant because Valley can no longer file a competing application for Channel *39 at Bakersfield.